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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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08/895, 094 07/16/97 PARULSKI

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TM02/0518

EXAMINER

HARRINGTON, A

ART UNIT	PAPER NUMBER
2612	21

DATE MAILED: 05/18/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

*TS*

## Office Action Summary

Application No.

08/895,084

Applicant(s)

Parulski et al

Examiner

Harrington

Group Art Unit

2012

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication .
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

### Status

Responsive to communication(s) filed on 2/7/01 - Admt F.

This action is FINAL.

Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 1 1; 453 O.G. 213.

### Disposition of Claims

Claim(s) 32-51, 54-61 is/are pending in the application.

Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

Claim(s) \_\_\_\_\_ is/are allowed.

Claim(s) 32, 42 is/are rejected.

Claim(s) 33-41, 43-51, 54-61 is/are objected to.

Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

### Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The proposed drawing correction, filed on \_\_\_\_\_ is  approved  disapproved.

The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. § 119 (a)-(d)

Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All  Some\*  None of the CERTIFIED copies of the priority documents have been received.

received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_.

### Attachment(s)

Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

Interview Summary, PTO-413

Notice of Reference(s) Cited, PTO-892

Notice of Informal Patent Application, PTO-152

Notice of Draftsperson's Patent Drawing Review, PTO-948

Other \_\_\_\_\_

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## DETAILED ACTION

### *Response to Arguments*

Applicants arguments are persuasive. All claims are allowable over prior art of record.

### *Double Patenting*

Section 804.01 details Prohibition of Double Patenting Rejections Under 35 U.S.C. 121 for claims where the Office has made a restriction requirement "*unless the claims of the different applications or patents are not consonant with the restriction requirement made by the Examiner, since the claims have been changed in material respects from the claims at the time the requirement was made*" (see MPEP 804.01). Here claims 32-51 and 54-61 were not subject to the original restriction and correspond to the invention elected for prosecution in the parent application.

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321© may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

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Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 32 and 42 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 12 of U.S. Patent No. 5,828,406 in view of Ueda (US 5,923,816) .

In claim 7, lines 1-2 of US Patent '406 preamble recites is an electronic camera operable in still image and motion preview modes which is equivalent to the application claim 32 recitation of an electronic still camera with a function of previewing motion images. Claim 32 further modifies the still and motion camera to include details of a mode which *previews motion on a display while capturing a still.*

In claim 7, lines 4-5 of US Patent '406 the body of the claim begins with reciting an image sensor including a two dimensional color filter array and a two dimensional array of image pixels. US Patent '406 further details in claim 12, the color filter array has a particular three color arrangement. The Patent '406 image sensor is equivalent to the application claim 32 recitation of an image sensor having a two dimension array of photo sites covered by a mosaic pattern of color filters including at least three different colors. US Patent '406 also recites details of the two dimensional array. The application claim doesn't explicitly disclose such detail of the image sensor; however, the claim limitation of a two dimensional array inherently includes the patent claim image sensor, such as rows, columns, registers.

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Application claim 32 continues by claiming each captured image to have a **first number of pixel values( the number corresponding to the image sensor)** provided in a first color pattern; and the claim 7, lines 7-8 and 18-21 of US Patent '406 requires the still image is output from the sensor, and the motion image is output by the same sensor in a preview mode where the pixels values correspond to the colors of the pixel of the image sensor.

Claims 32 further recites a motion processing means generates from the captured images a second number of color pixel values proved in a second color pattern having at least three different colors. US Patent claim 12, lines 7-11 recite a preview mode processor combines the digital pixel signal into a fewer number of RGB pixel signals by an averaging method which is equivalent to claims 32 motion processing. Claim 32 also recites the motion processing means generates captured images representative of a series of images to be previewed (displayed), and the **second number of color pixels values is less than the first number of color pixels values**. US Patent '406 claim 7, lines 20-23, recite the processor maps the pixels signal of the sensor array into a fewer number of same colored display pixels which constitutes the color of the display. The Patent claim 7, provides more detail of the method for creating second number of pixel values, and the claimed motion processor of the application does not provide much detail (broader scope) of the processing method. Although, the application claim doesn't recite the processing method as claimed in the patent, it would have been obvious to one of ordinary skill in the art to use a color processing method, such as averaging pixel values, as such techniques are well known in color image manipulation in camera systems, the Examiner takes Official Notice to this fact.

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Lastly , application claim 32 recites the motion processor provide a second color pattern different from the first color pattern. As described above, averaging method of claim 12 provides as second color pattern different from the first color pattern.

Application claim 32 recites a color display for presenting at least some of the motion images of a series of motion images corresponding to the captured images of the scene, the color display having an arrangement of color display pixels including at least three different colors in a pattern different form the first color pattern. US Patent '406 claim 11 recites the color filter array covering the image sensor is different than the color pattern of the display pixels. And US Patent claim 12 is an electronic camera with a motion preview mode . Although, the patent claim doesn't recite displaying at least some of the motion images as claimed in the application, it would have been obvious to display at least some of the motion images corresponding to captured images on the color display as done by the preview mode processor (claim 7, lines 16-22) of the patent, as the user may wish to see what is truly being recorded, and previewing selected portions of the input image signal is a well known function of digital cameras - Official Notice is taken to this fact. US Patent '406 also recites a color display comprising a specific two dimensional color pattern arranged in rows and columns, having substantially fewer rows and fewer columns than the image sensor. Although , the application claim fails to disclose details of the color display pattern, it would inherently comprise rows and columns. And the motion processor produces an image with fewer number of pixels for display, although not explicitly claimed in application claim 32, it would have been obvious that the display has fewer rows and columns than the sensor, since

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motion processing means outputs fewer pixel values, and it is the output from the motion processing means which is displayed.

Application claim 32 recites a still image processing means for generating a third number of pixel values including at least three different colors representative of a processed captured still image. US patent claim '406 recites a still image processor for processing pixels signals obtained during still image mode, see claim 7, lines 14-15. However, US Patent '406 fails to specifically disclose in the claim a third number of pixel values. Although, it would have been obvious to one of ordinary skill in the art the US Pat '406 would also incorporate still image data having a different number of pixel values than the moving image data because claim 7 states that the still image processor processes "the digital pixel signals obtained during the still image mode" and that number is the "3rd number of pixels values" of claim 32 .

Lastly, Claim 32 recites a digital memory for storing processed captured still images and capturing a still while previewing a motion image presented on display. Although, the camera claimed in the patent application does not claim an analog to digital converter , however it must inherently include a means for converting the image signal into digital image data, such as an A/D converter. And US Patent '406 does in fact explicitly claim an analog to digital converter ( see lines 9-10 of claim 7). Since US Pat '406 claims a digital camera, the still image and motion images captured in the camera must either incorporate a buffer/memory for storing the processed information or transmit the information to an external memory.

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It is also known in the art to *capture a still while displaying a motion image*, as taught by Ueda.

In the same field of endeavor, the Ueda discloses a camera system which records motion and still images. While watching motion images, the user may activates a button (14) to capture a still image for recording. For 5 seconds , the display switches to show the still image, then motion images are displayed again (col. 4,lines 26-67 and col. 5, lines 8-11). Thus it would have been obvious to one of ordinary skill in the art at the time the invention was made to include this feature in US Patent '406, as taught by Ueda, such that still images can be recorded without interrupting motion image processing , as taught by Ueda (col. 4, lines 55-57).

Claim 42 is substantively equivalent to claim 32, and is analyzed as discussed above in claim 32.

#### ***Allowable Subject Matter***

3. Claims 33-41,43-52, and 54-61 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alicia Harrington whose telephone number is (703) 308-9295. The examiner can normally be reached on Monday to Thursday from 9:30 am to 6:00 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiners supervisor, Wendy Garber, can be reached on (703) 305-4929.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-4700.

**Any response to this action should be mailed to:**

Commissioner of Patents and Trademarks

Washington, D.C. 20231

**or faxed to:**

(703) 308-6306, (for formal communications intended for entry)

**Or:**

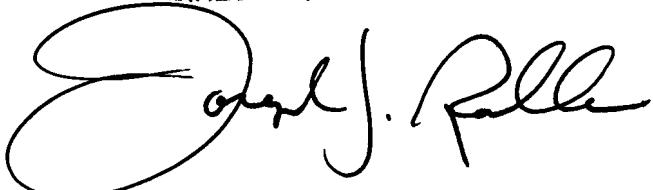
(703) 308-6296 (for informal or draft communication, please label "PROPOSED" or "DRAFT")

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA., Sixth Floor ( Receptionist).

AMH: *Am*

May 10, 2001

APPROVED:  
JOSEPH J. ROLLA  
DIRECTOR, TC 2600



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